



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Plymouth Education Association, NEA/NH

v.

Plymouth School Board and its agents

Case No. T-0209:4

Decision No. 84-07

APPEARANCES

PELRB: Robert E. Craig, Chairman presiding. Members Seymour Osman and Russell Hilliard.

ASSOCIATION: Wally Cumings, NEA/NH, Lynne Weston, NEA/NH, Betty Clark, and Karen Bourgeois

BOARD: Daniel A. Cabral, Superintendent, Philip Tapply

BACKGROUND

The Plymouth Education Association, NEA/NH (Association), filed unfair labor practice charges against the Plymouth School Board and its agents (Board) on November 1, 1982, charging violations of RSA 273-A:5 I (a) (c) (h) (i).

Specifically, the Association alleged violations of RSA 273-A in that the Board did issue individual contract (1976 thru 1982) to the School Nurse, Karen Bourgeois, which were inconsistent with the master contract in that these individual contracts set the salary of the School Nurse at an amount lower than the salaries negotiated for all unit members.

In its answer, the Board denied any breach of RSA 273-A and pointed out that Ms. Bourgeois had filed a grievance over this issue, under the provisions of the master contract, and this grievance was carried through all stages, including the final stage of "advisory arbitration". Under the contract the arbitration is "advisory only" and the decision of the School Board is final and binding. The arbitration award for Ms. Bourgeois was not agreed to by the Board and the Board further argued that the PELRB should not allow cases to come before it when this means the PELRB becomes a "binding arbitration" level.

A hearing was held at the PELRB's office in Concord on December 15, 1983 and all parties were represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing, it was clear that the Nurse was in the unit and her pay was not the same as specified in the contract for those with similar longevity nor did she receive pay as would those teachers with certain educational credentials as specified in the contract since Ms. Bourgeois did not have these same credentials.

The Board argued that the Nurse was in the unit but never specifically in salary schedule nor bargained for nor was any objection made about this over the years. The Board further argued that the Nurse was not a teacher nor did she have the extra duties of a teacher nor the professional development requirements of a teacher and, therefore, not covered by teacher's salary schedule, but rather separate salary.

After extensive argument and discussion, the PELRB, mindful of its decision in the Fall Mountain Regional School District case (Decision 80-40) decided that the test of intervention by the PELRB in this and similar cases should be whether or not a "clear and convincing violation of the contract occurs", not one based on ambiguous language subject to differing interpretations by the parties concerned.

In this case, given the fact that the contract salary schedule clearly applies to teachers but raises questions about the applicability to uses, the circumstances are such as to leave differing possible interpretations by either party. In such cases the PELRB declines to become the final arbitrator of the grievance process.

DECISION

(Orally announced on December 15, 1983)

The PELRB finds that the application of the salary schedule of the contract to the use is not "clear and convincing" and remains ambiguous and, therefore, we decline to interfere in negotiated grievance procedure all hereby order the complaint dismissed.


Robert E. Craig, Chairman

Signed this 12th day of January, 1984.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman and Russeel Hilliard present and voting.